

REPORT / RECOMMENDATION



To: Members of the Edina Housing & Redevelopment Authority **Agenda Item #:** HRA VI.

From: Bill Neuendorf *Bill Neuendorf*
Economic Development Manager

Action ☒
Discussion ☐
Information ☐

Date: June 18, 2013

Subject: Resolution No. 2013- 10, Authorizing Second Amendment to the Purchase Agreement for Property at 3930 West 49-1/2 Street

Action Requested:

Adopt Resolution.

Information / Background:

The Housing and Redevelopment Authority (HRA) previously entered into a purchase agreement to acquire the property at 3930 West 49-1/2 Street. This original agreement was modified on April 5th to provide adequate time to fully evaluate the environmental conditions of the property.

Since that time, the HRA has engaged Barr Engineering to conduct additional soil and ground water testing at the site to identify the degree of contamination. Barr's findings indicated soil contamination in quantities not unusual for former dry cleaning sites. Barr also determined that contamination has not entered the ground water system. The HRA's and seller's environmental consultants have worked cooperatively to enroll the site with the MPCA and to plan for remediation of the soil contamination. On June 12, 2013, the MPCA provided a "No Association" letter declaring that the City, HRA and successive owners are not liable for contamination that occurred prior to taking title to the property.

Based on the relatively small degree of contamination and the agreement of the owners to pay for the remediation costs, it is recommended that the Edina HRA proceed with the closing prior to June 30th.

The Second Amendment establishes an escrow fund to pay for remediation of hazardous materials, including professional services and fees paid to MPCA. Any remaining funds will be returned to the Seller when the HRA receives a "No Further Action" letter for the site. The Second Amendment also compels the HRA to proceed expeditiously so that the site can be returned to a productive use.

Attachments:

Resolution No. 2013-10
Second Amendment to Purchase Agreement

RESOLUTION NO. 2013-10
AUTHORIZING SECOND AMENDMENT TO PURCHASE AGREEMENT
FOR PROPERTY AT 3930 WEST 49-1/2 STREET

WHEREAS, on February 5, 2013, the Edina Housing and Redevelopment Authority (HRA) approved a purchase agreement to acquire real property located at 3930 West 49-1/2 Street, which was then executed on February 11, 2013; and

WHEREAS, on April 5, 2013, the Edina HRA approved the first amendment to the purchase agreement to provide additional time to evaluate soil and ground water conditions; and

WHEREAS, during the HRA's due diligence, it was determined that soil contamination exists to a degree that is not unusual for former dry-cleaning sites; and

WHEREAS, the Minnesota Pollution Control Agency (MPCA) has provided the HRA with a "no association" letter that protects the HRA from liability related to the existing soil contamination; and

WHEREAS, the HRA's environmental consultants have estimated the cost to remediate the site to likely be in the range of \$39,000 to \$195,000; and

WHEREAS, the Seller has agreed to pay for the remediation work after the closing; and

WHEREAS, the Seller agrees to an amount equaling 150% of the maximum remediation cost being held in escrow to fund the remediation work; and

WHEREAS, it is advantageous to both the Seller and the HRA to close the transaction prior to the June 30, 2013 deadline identified in the original purchase agreement.

NOW, THEREFORE, BE IT RESOLVED, the Edina Housing and Redevelopment Authority approves the Second Amendment to the Purchase Agreement for the property located at 3930 West 49-1/2 Street and authorizes the Chair and Executive Director to execute the documents necessary to purchase the property.

Dated: June 18, 2013.

Attest: _____
Ann Swenson, Secretary

James B. Hovland, Chair

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) SS
CITY OF EDINA)

CERTIFICATE OF EXECUTIVE DIRECTOR

I, the undersigned duly appointed and acting Executive Director for the Edina Housing and Redevelopment Authority do hereby certify that the attached and foregoing Resolution is a true and correct copy of the Resolution duly adopted by the Edina Housing and Redevelopment Authority at its Regular Meeting of June 18, 2013, and as recorded in the Minutes of said Special Meeting.

WITNESS my hand and seal of said City this _____ day of _____, _____.

Scott Neal, Executive Director

**SECOND AMENDMENT TO
REAL PROPERTY PURCHASE AGREEMENT**

THIS SECOND AMENDMENT ("Amendment") to the Purchase Agreement made effective this _____ day of June, 2013 ("Effective Date" by and between **3930 BUILDING, LLC**, a Minnesota limited liability company ("**Seller**") and the **HOUSING AND REDEVELOPMENT AUTHORITY OF EDINA, MINNESOTA**, a body politic and corporate under the laws of the State of Minnesota ("**Purchaser**").

RECITALS

WHEREAS, Seller and Purchaser entered into a Purchase Agreement dated February 11, 2013 for the property located in the City of Edina, Hennepin County, Minnesota, legally described on the attached Exhibit A (the "Property");

WHEREAS, the First Amendment to the Purchase Agreement, dated April 5, 2013 extended the time period for environmental review prior to closing;

WHEREAS, one contingency to Purchaser's purchasing the Property was Purchaser's satisfaction with review/inspection of the condition of the Property;

WHEREAS, Barr Engineering conducted a Phase I Environmental Site Assessment (April 2013), Limited Phase II Investigation and Supplemental Phase II Investigation (May 2013) (collectively, the "Barr Reports") of the Property and confirmed the presence of contamination associated with undocumented fill on the Property and an historic on-site dry cleaner;

WHEREAS, Seller enrolled the Property in the Voluntary Investigation and Cleanup ("VIC") Program of the Minnesota Pollution Control Agency ("MPCA") on behalf of Purchaser and the MPCA issued a No Association Determination ("NAD") letter to Purchaser dated June 12, 2013;

WHEREAS, Purchaser requires that the Environmental Remediation be completed commensurate with MPCA standards;

WHEREAS, Seller agrees that it shall be solely responsible for all costs associated with the mitigation of the release that has occurred on the Property. Seller has agreed to place the sum of \$292,500 in escrow with Escrow Agent (as defined in the Remediation Escrow Agreement) to reimburse Purchaser's costs associated with the NAD as required to construct a slab-on-grade parking garage with the potential for first floor commercial uses on the Property.

WHEREAS, In exchange for Seller placing \$292,500 in escrow, Purchaser is willing to close on the purchase of the Property.

WHEREAS, the \$292,500 placed in escrow shall be Seller's sole and exclusive responsibility to Purchaser for any environmental conditions on the Property.

NOW THEREFORE, for valuable consideration, including the promises and covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, Purchaser and Seller agree as follows:

1. Section 2 of the Purchase Agreement is amended to read as follows:

2. PURCHASE PRICE AND MANNER OF PAYMENT. The total purchase price ("**Purchase Price**") for the Property is Two Million Six Hundred Fifty Thousand and no/100 (\$2,650,000.00) Dollars. Purchaser shall hold back \$292,500.00 from the payment of the Purchase Price at Closing ("Remediation Holdback Amount") pursuant to the terms of the Remediation Escrow Agreement attached hereto as Exhibit B ("Remediation Escrow Agreement"). The Purchase Price less the Remediation Holdback Amount shall be payable by Purchaser to Seller by wire transfer at Closing (as hereinafter defined).

2. Section 7(g) of the Purchase Agreement is amended to read as follows:

7. REPRESENTATIONS OF SELLER. On information and belief, without special investigation, Seller hereby represents to Purchaser:

- (a) That Seller has the requisite power and authority to enter into this Purchase Agreement and the closing documents relating thereto to be signed by it; that the execution, delivery and performance by Seller of such documents do not conflict with or result in violation of any judgment, order or decree of any court to which Seller is a party; such documents are valid and binding obligations of Seller.
- (b) Except for the pending VIC application, there are no existing claims, actions, suits or other proceedings pending, or to the knowledge of Seller, threatened by any governmental department or agency, or any other corporation, partnership or entity or person whomsoever against Seller or the Property, which in any manner or to any extent may detrimentally affect the Property or Purchaser's right, title or interest in and to any part or all of the Property after Closing.
- (c) Other than Seller, there are no other tenants or occupants of the Property.
- (d) On the Date of Closing there will be no (i) outstanding leases or occupancy agreements, or (ii) outstanding contracts made by Seller for any improvements to the Property which have not been fully paid for or for which Seller shall not have made arrangements to pay off, at Closing, or that will affect the Property or be binding upon Purchaser or upon the Property subsequent to Closing without Purchaser's written consent; and Seller shall cause to be discharged all mechanic's or materialmen's liens arising from any labor or materials furnished to the Property that were made at the request of Seller, its agents, or contractors, prior to the Date of Closing and any mortgages or other such similar encumbrances.
- (e) Until the Date of Closing, except as otherwise provided in this Agreement, Seller shall maintain the land associated with the Property in its present condition, reasonable wear and tear and damage by casualty excepted.

- (f) Seller is not a foreign person; as such term is defined in Section 1445(f) (3) of the Internal Revenue Code of 1986, as amended, and shall deliver an affidavit to that effect at closing, which shall be in form and substance reasonably acceptable to Purchaser.
- (g) To Seller's knowledge, except as disclosed in the documentation provided to Purchaser pursuant to Section 8, the pre-demolition report prepared by Braun Intertec dated April 8, 2013 (the "Pre-Demolition Report), the Limited Phase I Investigation of the Property performed by Barr Engineering Company, April 2013, and the Limited Phase II Investigation of the Property performed by Barr, dated May 20, 2013, (i) no toxic materials, hazardous wastes or hazardous substances, as such terms are defined in the Resource Conservation and Recovery Act of 1996, as amended (42 U.S.C. §6901, et seq.) or in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601, et seq.), including, without limitation, any asbestos or asbestos-related products or materials and any oils, petroleum-derived compounds or pesticides ("Hazardous Materials") have been generated, treated, stored, released or disposed of or otherwise placed, deposited in or located on the Property; and (ii) the Property is free of Hazardous Materials and is not subject to any "superfund" type liens or claims by governmental regulatory agencies or third parties arising from the release or threatened release of hazardous substances in, on, or about the Property.
- (h) To Seller's knowledge, the conveyance of the Property pursuant hereto will not violate any currently existing applicable statute, ordinance, governmental restriction or regulation, or any private restriction or agreement to which Seller is a party.
- (i) To Seller's knowledge, there are no underground storage tanks or wells on the Property, it being understood that the representation as to wells shall be recited in the Deed to be delivered by Seller at Closing.
- (j) To the best of Seller's knowledge, Seller represents that methamphetamine production has not occurred on the Property.
- (k) Solely for purposes of satisfying the requirements of Minn. Stat. § 115.55, Seller certifies that, to Seller's knowledge, there is no "individual sewage treatment system" (within the meaning of that statute) on or serving the Property. Seller certifies that sewage generated on the Property goes to a facility permitted by the Minnesota Pollution Control Agency.

Except as herein expressly stated, Purchaser is purchasing the Property based upon its own investigation and inquiry and is not relying on any representation of Seller or other person and is agreeing to accept and purchase the Property "as is, where is" subject to the conditions of examination herein set forth, the terms of the Remediation Escrow Agreement, and the express warranties herein contained. The representations set forth in this section shall be continuing and shall be true and correct as of the Date of Closing with the same force and effect as if made at that time and shall survive the Closing for a period of two (2) years.

3. Section 10 of the Purchase Agreement is amended to read as follows:

10. PURCHASER'S CONTINGENCIES. The obligations of Purchaser under this Agreement are expressly contingent upon the following:

- (a) The representations of Seller contained in this Agreement must be true now and as of the Closing Date, as if made on the Closing Date and Seller shall have delivered to Purchaser on the Closing Date, a certificate, signed by Seller, certifying that such representations are true as of the Closing Date (the "**Bring-down Certificate**"), except to the extent that the representations are no longer true and acceptable to Purchaser.
- (b) Title to the Property and easements to be acquired under this Agreement shall be held by Seller on the Closing Date, and shall be free and clear of all encumbrances except the Permitted Encumbrances.
- (c) This item purposely left blank.
- (d) This item purposely left blank.
- (e) Seller having caused the removal and proper disposal of any Hazardous Materials identified by Braun Intertec in the pre-demolition survey, at Seller's sole cost and expense, on or before the Closing Date, in accordance with applicable laws.
- (f) This item purposely left blank.
- (g) Seller, as owner of the Property, agrees to sign a voluntary waiver of all relocation assistance, services, payments and benefits as set forth in Minnesota Statute Section 117.521, as required under Section 4.
- (h) Seller shall perform all of the obligations required to be performed under this Agreement, as and when required by this Agreement, except as waived by Purchaser.
- (i) Seller and Purchaser entering into the Remediation Escrow Agreement attached hereto as Exhibit B for Seller's funding of remediation of the Property.

If the contingencies set forth above have not been satisfied or waived by Purchaser on or before the Closing Date, as otherwise extended, Purchaser may terminate this Agreement by written notice to Seller within 3 business days after the expiration of the time period for Purchaser to satisfy or waive any such contingency, in which event this Agreement shall terminate and neither party shall have any further obligations hereunder, except for Purchaser's indemnity obligations pursuant to Section 8. The contingencies set forth in this section are for the sole and exclusive benefit of Purchaser, and Purchaser shall have the right to waive the contingencies by giving notice to Seller, provided Purchaser abides by the time requirements set forth above.

4. Section 11 of the Purchase Agreement is amended to read as follows:

11. **CLOSING**. The closing hereof shall take place on June 27, 2013, except as otherwise extended or terminated as provided under this Agreement (the “**Closing**” or “**Date of Closing**”). The Closing shall take place at the offices of the Title Company. If Closing does not occur on or before June 28, 2013, this Agreement shall be null and void, Purchaser shall execute a quit claim deed for the Property in favor of Seller, and neither party shall have any further obligations hereunder, except for Purchaser’s indemnity obligations pursuant to Section 8. At Closing, Seller and Purchaser shall disclose their Social Security Numbers or Federal Tax Identification Numbers for the purpose of completing state and federal tax forms.

5. Section 12 of the Purchase Agreement is amended to add a new subsection (h) to read as follows:

(h) Execute and deliver to Purchaser the Remediation Escrow Agreement.

6. Section 13 of the Purchase Agreement is amended to add a new subsection (c) to read as follows:

(c) Execute and deliver to Seller the Remediation Escrow Agreement.

7. This Amendment shall be considered an integral part of the Purchase Agreement and shall be binding upon the Seller and Purchaser from the date first above written. Subject only to the modification referred to in this Amendment, all other terms and conditions of the Purchase Agreement shall remain in full force and effect. All capitalized terms used herein but not defined shall have the meanings ascribed to them in the Purchase Agreement.

8. This Amendment may be executed in counterparts. Signatures may be transmitted via facsimile or in “PDF” format via e-mail.

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first written above, in multiple counterparts, each of which shall be deemed an original and all of which shall evidence but one agreement.

SELLER:

3930 BUILDING, LLC

By: _____

James W. Nelson
Its Sole Member

PURCHASER:

**HOUSING AND REDEVELOPMENT AUTHORITY
OF EDINA, MINNESOTA**

By: _____

James B. Hovland, Its Chair

And: _____

Scott Neal, Its Executive Director

EXHIBIT "A"

Legal Description of Property

That Part of the North $\frac{1}{2}$ of Lot 34, Auditor's Subdivision Number 172, lying Southerly of the Westerly extension of the North line of the South 177.5 feet of Lot 32.

EXCEPT: The West 14.75 feet thereof.

ALSO: The South 177.5 feet of Lot 32, Auditor's Subdivision 172.

Together with an easement for driveway purposes, filed of record as Document No. 2542948.

EXHIBIT "B"
REMEDIATION ESCROW AGREEMENT

EXHIBIT "B"
ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement") is made and entered into this _____ day of June, 2013 by and among **3930 BUILDING, LLC**, a Minnesota limited liability company, located at 2888 Joppa Avenue, Saint Louis Park, MN 55416 ("**Seller**") and the **HOUSING AND REDEVELOPMENT AUTHORITY OF EDINA MINNESOTA**, a body politic and corporate under the laws of the State of Minnesota, located at 4801 West 50th Street, Edina MN 55424 ("**Purchaser**") and **CITY OF EDINA**, a Minnesota municipal corporation, located at 4801 West 50th Street, Edina MN 55424 ("**Escrow Agent**").

RECITALS:

WHEREAS, Seller is the owner of certain real property located in Hennepin County, Minnesota, legally described on Exhibit A attached hereto (the "Property"); and

WHEREAS, Seller is selling and Purchaser is purchasing the Property under a Real Estate Purchase Agreement dated February 11, 2013, as amended by the First Amendment dated April 5, 2013 and the Second Amendment dated June _____, 2013 (collectively, the "Purchase Agreement"); and

WHEREAS, one contingency to Purchaser's purchasing the Property was Purchaser's satisfaction with review/inspection of the condition of the Property;

WHEREAS, Barr Engineering conducted a Phase I Environmental Site Assessment (April 2013), Limited Phase II Investigation and Supplemental Phase II Investigation (May 2013) of the Property and confirmed the presence of contamination associated with the undocumented fill on the Property and an historic on-site dry cleaner;

WHEREAS, Seller enrolled the Property in the Voluntary Investigation and Cleanup ("VIC") Program of the Minnesota Pollution Control Agency ("MPCA") on behalf of Purchaser and the MPCA issued a No Association Determination letter to Purchaser, dated June 12, 2013 ("NAD").

WHEREAS, Purchaser requires that the Environmental Remediation shall be completed commensurate with MPCA standards.

WHEREAS, Seller agrees that it shall be solely responsible for all costs associated with the mitigation of the release that has occurred on the Property. Seller has placed the sum of \$292,500 in escrow with Escrow Agent to reimburse Purchaser's costs associated with complying with the NAD as required to construct a slab-on-grade parking garage with potential for first floor commercial uses on the Property.

WHEREAS, in exchange for Seller placing \$292,500 in escrow with Escrow Agent, Purchaser is willing to close on the purchase of the Property.

WHEREAS, Purchaser intends to follow best industry practices and complete the remediation of the site in a cost effective manner using the Sellers funds held in escrow.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties hereto, the undersigned agree as follows:

1. Appointment of Escrow Agent. Seller and Purchaser hereby designate and appoint Escrow Agent as their agent hereunder, and Escrow Agent hereby accepts such appointment on the terms and conditions contained herein.
2. Funds; Obligations.
 - 2.1 Purchaser has deposited \$292,500 (the "Escrowed Funds") with Escrow Agent as security for the Environmental Remediation (defined below), the receipt of which is hereby acknowledged by Escrow Agent. The Escrowed Funds shall be deposited by Escrow Agent into an interest bearing account with a financial institution reasonably acceptable to Seller, which interest shall be held and paid to Seller.
 - 2.2 For purposes of this Agreement, "Environmental Remediation" means:
 - (i) Preparing and implementing the Response Action Plan described in the NAD, including the investigation, removal, disposal, and mitigation of any Hazardous Substances on the Property, to the extent required to allow construction of a slab-on-grade parking garage facility with the potential for first floor commercial uses in compliance with the NAD, as more precisely defined on the attached Exhibit B;
 - (ii) Obtaining a No Further Action Letter from the MPCA consistent with the work described in subparagraph (i)(the "NFAL");
 - (iii) "Environmental Remediation" does not include:
 - a. The Phase I environmental assessment, Phase I investigation, MPCA VIC application and Supplemental Phase II investigation (4 temporary ground water wells) that Purchaser caused to be performed prior to the date hereof;
 - b. Any construction work that would be performed regardless of whether Hazardous Substances exist on the Property, including, without limitation, removing soil, installing of footings, and construction of a foundation;

- c. Any additional investigation, removal, disposal or mitigation necessary for any use requiring greater remediation than a slab-on-grade parking garage with the potential for first floor commercial uses;
3. Disbursement of Escrowed Funds. Escrow Agent shall disburse the Escrowed Funds, or portions thereof, for Environmental Remediation, by paying such funds jointly to Purchaser and to the specific contractor making application for such funds within five business days of Purchaser notifying Escrow Agent of a pending invoice for fees incurred in connection with the Environmental Remediation,
4. Notwithstanding anything contained in this Agreement, if Purchaser obtains a reimbursement from the MPCA of any portion of the cost of the Environmental Remediation through the MPCA Drycleaner Fund or otherwise, Purchaser shall promptly share 50 percent of any such proceeds with the Seller. Purchaser's obligation under the preceding sentence shall survive the termination of this Agreement.
5. Release of Escrowed Funds. Upon the completion of the Environmental Remediation, as evidenced by issuance of the NFAL by the MPCA, a copy of which Purchaser shall promptly send to Seller and Escrow Agent, Purchaser shall provide Seller with copies of previous disbursements of Escrowed Funds and shall promptly authorize Escrow Agent to release the yet un-disbursed Escrowed Funds to Seller, together with any interest accrued thereon, in which event Escrow Agent shall promptly disburse such Escrowed Funds to Seller, and this Agreement shall be deemed terminated upon such disbursement.

In the event that the Seller disputes any of the previous disbursements of escrowed funds prior to receipt of the NFAL, and resolution is unable to be achieved, both Seller and Purchaser agree to use an independent mediator to attempt to settle the dispute in a timely and efficient manner.

6. Responsibility of Escrow Agent. Escrow Agent shall not be responsible or liable to any person, whether or not a party to this Agreement, for any act or omission of any kind so long as it has acted in good faith and without negligence upon the instructions herein contained or upon the instructions hereinafter delivered to it as contemplated by this Agreement. Escrow Agent shall not be responsible for actions taken in accordance with, and may rely and act upon, any certificate or other document conforming to the applicable provision hereof. All persons shall be conclusively bound as against Escrow Agent by any payment pursuant to, and in conformity with, the terms of this Agreement.
7. Definitions. As used in this Agreement, the following terms shall have the following meanings:

- a. **"Environmental Law"** means the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, 42, U.S.C. Section 6901 et. seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1802 et. seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 et. seq., the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et. seq., the Clean Water Act, 33 U.S.C. Section 1321 et. seq., the Clean Air Act, 42 U.S.C. Section 7401 et. seq., the Minnesota Environmental Response and Liability Act, Minn. Stat. Ch. 115B, the Minnesota Petroleum Tank Release Cleanup Act, Minn. Stat. Ch. 115C, and any other federal, state, county, municipal local or other statute, law, ordinance or regulation which may relate to or deal with human health or the environment, all as may be from time to time amended.
 - b. **"Hazardous Substances"** means asbestos, unreaformaldehyde, polychlorinated biphenyls ("PCBs"), nuclear fuel or material, chemical waste, radioactive material, explosives, known carcinogens, petroleum products and by-products and other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law.
8. Indemnification. Except for the negligence by Purchaser or Purchasers agents, Seller hereby agrees to defend, indemnify and hold harmless the Property, Purchaser, Escrow Agent, and any managers, directors, officers, employees, agents, successors and assigns of the foregoing entities (hereinafter collectively referred to as the "Indemnitees") from and against, and shall reimburse each such Indemnitee for, any and all loss, claim, liability, damage, judgment, penalty, injunctive relief, injury to person, property or natural resource, cost, expense, action or cause of action arising in connection with or as the result of any past, use, handling, storage, transportation, manufacture, release or disposal of any Hazardous Substances in, on, or under the Property and for all costs associated with the Environmental Remediation (hereafter collectively referred to as "Loss"). The foregoing indemnification against Loss includes, without limitation, indemnification against all costs in law or in equity of removal response, investigation or remediation of any kind, and disposal of such Hazardous Substances, all costs of causing the Property to be in compliance with, all applicable Environmental Law, all costs associated with claims for damages to persons, property, or natural resources, and the Indemnitees' reasonable attorneys' and consultants' fees, court costs and expenses incurred in connection with any thereof.
9. Survival of Indemnification. The obligations of Seller under this Agreement shall survive the recording of the deed conveying title to the Property from Seller to Purchaser and the termination of this Escrow Agreement.
10. Successors and Assigns. This Agreement and the rights and obligations hereunder may not be assigned by Purchaser without the prior written consent of Seller, may not be assigned by Seller without the prior written consent of Purchaser and may not

be assigned by the Escrow Agent without the prior written consent of Seller and Purchaser. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns, including, without limitation, a trustee, successor receiver, or debtor in possession of or for any such party.

11. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Minnesota applicable to agreements made and to be performed entirely within such state.
12. Entire Agreement. This Agreement constitutes the entire understanding of the parties with respect to the subject matter contained herein and supersedes all prior agreements, written or oral, with respect thereto. This Agreement may be amended, modified, superseded or canceled, and the terms and conditions hereof may be waived, only by a written instrument signed by all of the parties or, in the case of a waiver, by the party waiving compliance.
13. Notices. Any and all notices or requests for disbursement shall be sent by means of e-mail transmission to the e-mail addresses listed below, followed up by depositing such notice in the U.S. Mail to the specific addresses listed herein.

If to Seller: 3930 Building LLC
% Eberhardt Properties, Inc.
2888 Joppa Avenue
St. Louis Park MN 55416

thomasmnelson@mac.com

If to Buyer: Edina Housing and Redevelopment Authority
4801 West 50th Street
Edina, MN 55424
ATTN: Scott Neal, Executive Director

sneal@edinamn.gov and bneuendorf@edinamn.gov

If to Escrow Agent: City of Edina
4801 West 50th Street
Edina, MN 55424
ATTN: Scott Neal, City Manager

Sneal@edinamn.gov and jwallin@edinamn.gov

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

**PURCHASER:
HOUSING AND REDEVELOPMENT AUTHORITY
OF EDINA, MINNESOTA**

By: _____
James B. Hovland, Its Chair

And By: _____
Scott Neal, Its Executive Director

**SELLER:
3930 BUILDING, LLC**

By: _____
James W. Nelson, Its Sole Member

**ESCROW AGENT:
CITY OF EDINA**

By: _____
Scott Neal, Its City Manager

EXHIBITA

Legal Description of Property

That Part of the North $\frac{1}{2}$ of Lot 34, Auditor's Subdivision Number 172, lying Southerly of the Westerly extension of the North line of the South 177.5 feet of Lot 32.

EXCEPT: The West 14.75 feet thereof.

ALSO: The South 177.5 feet of Lot 32, Auditor's Subdivision 172.

Together with an easement for driveway purposes, filed of record as Document No. 2542948.

EXHIBIT B

Definition of Environmental Remediation

3930 49½ Street West
Edina, Minnesota

Project Activity	Cost Estimate
Response Action Plan (RAP) / MPCA coordination	\$7,000 - \$10,000
RAP implementation	
Excavate, haul + dispose 25 cy of hazardous waste ¹	\$7,000 - \$24,000
Excavate, haul + dispose 155 cy of industrial waste ²	\$7,000 - \$9,000
Backfill + compaction	\$1,000 - \$2,000
Oversight during contaminated soil excavation + chemical analysis	\$5,000 - \$10,000
Implementation Report / MPCA coordination	\$7,000 - \$15,000
Building construction activities ³	\$0 - \$80,000
Oversight, operation implementation, O+M plan, post monitoring	\$0 - \$25,000
MPCA VIC charges	\$5,000 - \$20,000
Drycleaner Fund Reimbursement ⁴	\$
Estimated Project Total:	\$39,000 - \$195,000

¹ This cost assumes that following the demolition of the building and floor slab, a portion of the contaminated soil is excavated and transported for disposal as hazardous waste (\$200 - \$700/ton). The weight of contaminated soil was estimated assuming an area 30 feet by 40 feet and 4 feet deep is impacted (approximately 180 cubic yards [cy] or 250 tons, assuming a soil density of 1.4 tons/cubic yards) and less than 15% of this is considered hazardous waste (25 cy or 35 tons). The volume of soil excavated could require disposal as hazardous waste.

² This cost assumes that following the demolition of the building and floor slab, a portion of the contaminated soil is excavated and transported for disposal as industrial waste (\$30 - \$40/ton). The weight of contaminated soil was estimated assuming an area 30 feet by 40 feet and 4 feet deep is impacted (approximately 180 cy or 250 tons, assuming a soil density of 1.4 tons/cubic yards) and at least 85% of this is considered industrial waste (155 cy or 215 tons).

³ Building construction activities may include a vapor barrier and/or an active or passive sub-slab mitigation system depending on the residual soil and/or groundwater concentrations present and whether a commercial building with occupants is constructed on the property. It is uncertain whether these costs are reimbursable under the MPCA Drycleaner Fund.

⁴ Under a best case scenario, the MPCA Drycleaner Fund will reimburse all of the eligible site investigation and remediation costs with a \$10,000 deductible; however, Purchaser would be required to show proof of payment for the activities prior to reimbursement.